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DOCKETS  
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U.S. Department of Transportation Dockets  
Docket No. FAA-? 999-6673  
400 Seventh Street, SW  
Room Plaza 401  
Washington, DC 20590

**RE: Certification of Screening Companies**  
**FAA-1999-6673-22**

Dear Sir or Madam:

Thank you for the opportunity to comment on the Notice of Proposed Rule Making (NPRM) for the Certification of Screening Companies.

As an organization, AHL Services is a publicly traded company (NASDAQ) focused on outsourced staffing solutions. On a global basis, AHLS has over 14,000 employees assigned to aviation support related functions.

First, we would like to say that we are very pleased that the Department of Transportation has chosen to certify screening companies as opposed to individual screeners. As one reviews the entirety of the NPRM, it is an obvious conclusion that civil liability must reside with responsibility. If individual screeners were certified, there would be no recourse for civil liability. We agree with the stated interpretation that both Title 49 and the Federal Aviation Reauthorization Act of 1996 preclude individual screener certification.

We would like to raise the following concerns relating to four general areas of screening company certification.

1. Clarifying the Roles of Carriers and Screeners

**Joint Responsibility and Double Jeopardy**

In regard to the issue of joint responsibility, § II.D. states:

1. The ultimate responsibility for screening lies with the air carriers;  
and
2. That certified screening companies would be directly accountable to the FAA for failure to carry out their screening duties.

While we understand the necessity for joint responsibility, the application of punitive measures is unclear. The FAA needs to clarify and eliminate any possibility of "double jeopardy" in the application of civil penalties. For this reason, we believe that while statutorily it may be clear that the ultimate responsibility lies with the carriers, § 111.117 is an essential element needed to clarify the joint relationship between the two parties.

### **Inspection Authority**

The FAA has the ability to inspect whether or not the carrier is providing proper oversight of the screening operations. In turn, the air carrier should have inspection authority over the screening company, as they can be held accountable for the screening company's actions. After such an inspection has occurred, there must be a procedure for screening companies to receive air carrier approval as a result of that oversight.

### **Issuance of Security Directives (SD) and Emergency Amendments (EA)**

§111.101, states that the most efficient means for the FAA to issue SD and EA requirements to screening companies is to continue the practice of issuing them to the carriers who then provide the appropriate information to their screening companies. It is our position that SD and EA requirements applicable to the screening process should be issued by the FAA directly to the screening companies providing screening services for air carriers.

In general, we also believe that because of increased direct responsibility, it would benefit all organizations involved to now include screening companies in critical decision making discussions and group meetings. One such example is to include screening companies as members of the Integrated Product Team.

Traditionally, successful passenger screening programs have been predicated on the involved organizations' collective effort to embrace a "teamwork" relationship. By separating accountability, concern is raised relative to the overall effect of this NPRM on such relationships. Greater clarity will help ease this concern.

## **2. Employee Monitoring Issues**

### **Threat Image Projection System (TIP)**

We understand the implied benefits of using TIP; however, we strongly urge the following:

- All TIP information be protected by SSI.
- A certified screening company has access to all levels of TIP testing information.
- The NPRM suggests that at some future time performance standards could be developed, primarily relying on the TIP system, to monitor the performance of screening locations. While such a system affords efficiencies in the logistics of test administration, it can not and should not replace "live" practical testing on behalf of the FAA, air carriers and screening companies. Countless benefits exist to live testing, primarily the interaction between all involved parties at the checkpoint. In addition, not all "real life" situations can be simulated via TIP. Lastly, over the past two years the majority of screening related deficiencies have been in two areas: breach prevention/control and screening of persons via walk through mag/hand held mag/consent search. These areas can not be addressed from a performance measurement perspective.

- The TIP system must be implemented and evaluated by all parties prior to an agreement to universally utilize this as a performance measurement. Originally TIP was a training tool to improve detection. Without adequate analysis and performance assessment of TIPS, it would not be prudent to assume the TIP system is a “one-size-fits-all” answer.
- If at some future time certificate status is based on performance standards, the standards must be defined to insure uniformity in certifying screening companies. Examples of issues that need to be standardized from location to location are how frequently companies are tested, what elements are tested, and how the test is administered.

### **Carrier Oversight**

The NPRM enumerates several requirements in terms of the carriers role in monitoring training. Proposed § 111.215(e) would require each screening company to ensure every trainee takes the following tests, and that they are monitored by an employee of the carrier for which it screens:

- § 111.215(a): standardized FAA screener readiness tests for each type of screening to be performed and the procedures and equipment to be used.
- § 111.215(c) : FAA review test which is taken after the completion of 40 hours of on-the-job training. [§ 111.215(b)].
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The monitor is then required to be present during the entire testing and grading process.

These requirements raise several concerns. Because it is up to the screening company to request the monitor from the air carrier, the screening company is placed in a position where they cannot move forward with any testing, until it is convenient for the air carrier to monitor the process. Situations could arise, through no fault of the air carrier, in which screening companies are held up for an indefinite period due to completely unrelated demands on the carrier's time.

This problem is compounded by the fact that § 111.215(a) is required before any on-the-job training can begin. Because 40 hours of on-the-job training is required, in addition to the completion of § 111.215(c), it is of critical importance that monitors are available when needed. Due to historical trends relative to employee turnover which is characteristic of the screening industry, there are times when new employees are needed quickly. Some carriers have submitted comments expressing concern over the resources they have available to do this constant monitoring. Alternatives must be spelled out in the event such conflicts should arise.

### **3. Training Issues**

#### **Current Employees**

How will the new required training affect current employees? Is it the intention of the FAA that everyone who currently works as a screener be subjected to the same training as incoming trainees? The NPRM states in § 111.109 that the Agency is willing to provide accommodations for existing

screening companies in regards to certification. We would ask that part of these accommodations include a caveat which allows for current employees to be grandfathered into the system, and all requirements be administered on a forward basis.

A second issue is recurrent training. The expectations of the FAA in this area need to be made clear as we move forward. How often is this training expected to take place? What will make up the components of the training? As with new trainees, all recurrent testing must be monitored by a carrier employee, which raises the carrier oversight issues outlined above.

### **Dissemination of Sensitive Security Information (SSI)**

The application of § III.207 in regards to the dissemination of SSI is unclear. It is unrealistic to complete screener training without sharing SSI. In addition, § 111.207 suggests that SSI should not be shared with trainees whom you suspect may not complete training. How is it possible to implement such a policy?

### **Training Records**

We strongly object to the provisions of § III.221 requiring the forwarding of training records at the request of the employee. Screening companies place a significant investment in screening and training its employees. To have an employee simply “walk away” to work for a competitor without a similar investment is an unfair competitive advantage. However, in the event a screening company leaves a location, the transfer of screening records to the primary carrier is an understandable stipulation.

## **4. Certification Compliance Issues**

### **Proposed Timeline**

Ultimately, whatever timeline is settled on, companies must have adequate preparation time to come into compliance.

§ 111.109(k) proposes a timeline for compliance of 60 days after the final rule is published. As of that date, no company could begin screening under part 108, 109, or 129 unless it holds a provisional screening company certificate. In requesting comments on this proposed period, it is difficult to respond without knowing the full extent of the administrative requirements expected. While the requirements for Phases I and II are generally outlined in § 111.109(b), it is impossible at this time to predict how much time will be needed to come into compliance with the final rule. We ask that the FAA take these time constraints into consideration, as well as the considerable review time the agency will need in order to respond to the applications submitted in the applicable timeframe by both carriers and screeners.

### **Modification to 60-Month Period**

In § 111.109(d)(2), the FAA proposed the 60-month duration as a reasonable option for obtaining the most benefits with the least burden. § 111.109(d)(2) also solicits comments on the feasibility of a shorter

duration, such as 2 or 3 years. We believe that if a new screening company is requesting certification under the proposed FAR Part 111 the FAA should initially offer a 1 year certification. After the end of that year, the FAA could conduct an intensive review of the procedures and practices of that screening company. If the review is satisfactory the FAA would then issue the screening company a 5-year certificate.

### **Decertification Procedures**

In the unfortunate event of **decertification**, a performance trigger must be defined for the situations in which the FAA decides to pursue such a drastic remedy. The only guidance given is if “significant deficiencies” are found during the 5-year period, the FAA could revoke the certificate. Given the impact of such a measure, a vague open-ended interpretation of this issue is unacceptable. Specifics should include how long the company will have to correct the identified problem, and who will monitor the performance of the corrective actions taken.

Secondly, in such cases where the circumstances are extreme enough to warrant “**decertification**” or the removal of a non-performing company, a time period for transition for the incoming company needs to be defined. The NPRM expresses concern over the practice of hiring incumbent personnel and suggests additional corrective action take place. As we all know during contract transitions not all changes are dramatic and immediate. The incoming company should have the ability to evaluate the issues, assess the operation, and develop an action plan.

In closing, we would like to address one last issue. We believe that confusion will result if localities have the ability to preempt federal regulations and enact their own certification requirements.

Crucial questions must be answered to provide clarity to this situation.

1. Will the rule preempt local action?
2. What are companies expected to do in the interim? If localities act between now and the effective date of the final rule, are companies expected to comply with the enacted requirements?

For screening companies who operate all over the country, complying with an indeterminate number of certification requirements would be an administrative nightmare. If the rule allows localities to **pre-empt** the FAA, screening companies could be subjected to several different certification policies within one state. Training would be ongoing for current employees as rules could change frequently. The focus of the companies would turn to compliance instead of the issue at hand, which is the enhanced safety and security of the passengers, facilities and equipment. It is imperative that companies have clarity on this issue prior to the effective date of the NPRM.

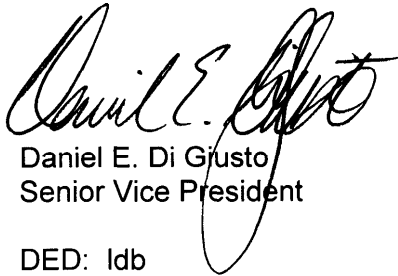
We would hope that the FAA would consider following the policy prescribed by the 5<sup>th</sup> Circuit. In Huntleigh Corporation v. Louisiana State Board of Private Security Examiners (906 F.Supp. 357), the U.S. District Court ruled that the State of Louisiana could not add to the uniform training standards or minimum qualifications for individuals who perform **pre-departure** screening

as set out by the Administrator of the FAA. This is an activity which has been expressly preempted by federal law.

Again, we thank you for the opportunity to comment on the **NPRM** for the certification of screening companies.

Sincerely,

ARGENBRIGHT SECURITY, INC.

A handwritten signature in black ink, appearing to read "Daniel E. Di Giusto". The signature is fluid and cursive, with a large loop at the end.

Daniel E. Di Giusto  
Senior Vice President

DED: ldb